IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 13 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UMEDPURI N. GOSWAMI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR.N.D. NANAVATI WITH MR.HRIDAY BUCH FOR M/S NANAVATY ADVOCATES for Applicant(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 16/01/2007

ORAL JUDGMENT

The petitioner-original accused being aggrieved by order dated December 19, 2006 passed below

Exhibits 19, 20, 22 and 23 in Sessions Case No.37 of 2006 by the learned Additional Sessions Judge, Fast Track Court, Porbandar, is before this Court.

Exhibits 19, 20, 22 and 23 were disposed of by a 'common order', and that 'common order' is under challenge in this Criminal Revision Application. The aforesaid applications were filed by different accused, namely, Exh.19 was filed 'Karan Sarman Jadeja'; Exh.20 was filed by 'Umedpuri Nathupuri Goswami' (present petitioner); Exh.22 was filed by 'Santokben Jadeja'; and Exh.23 was filed by 'Bhoja Saraman'.

2. The present petitioner-applicant had filed application-Exh.20 praying that as from the evidence on record in the matter of C.R. No.I-42 of 2005 registered at Kamlabaug Police Station, there is no evidence showing his involvement in the main incident or in the so called conspiracy, even if the contents of the charge sheet are taken into consideration. It is also the case of the petitioner-accused that there is no material which can be led as legal evidence at

the time of trial and can be accepted, and therefore, it is not possible to frame charge against the present petitioner-accused for the offence alleged in the charge sheet. It is also contended in the application that there are no justifiable reasons for framing the charge and therefore, it is a fit case for discharge of the present petitioner.

3. Mr.Nanavati, learned senior counsel with Hriday Buch appearing for the petitioner submitted that even as per the case of the prosecution, the present petitioner was not present on 28.02.2005 in a meeting which took place between 'Kandhal Sarman Jadeja', the main accused, the mother of 'Kandhal Sarman' i.e. Santokben, 'Kano' and 'Karan' and his wife 'Rekha', wherein it was decided to do away with the deceased, 'Keshu Nebha'.

Learned senior counsel submitted that thereafter, as an act of furtherance of the said conspiracy-decision taken in the said meeting on 01.03.2005, it was only 'Kandhal Sarman' and 'Kano', went from 'Rajkot' to 'Porbandar'. At Porbandar 'Jayesh' Alias 'Jayu Deva

Gadhvi' was taken together after which they went to the place of the incident, and executed the plan. It is also the case of the prosecution that after the incident, the accused 'Kandhal Sarman' telephoned 'Santokben' informed about the success of the plan and also the fact that the accused are coming to Rajkot.

The learned senior counsel submitted that as stated above even at the time of occurrence of the main incident, the present petitioner-accused was not present. He submitted that it was only at a very late stage, that is after the accused came to Rajkot, they started for Bhavnagar via Jasdan. It is at Jasdan that the present petitioner joined them along with 'Karan', Driver-'Ranjit' and the present petitioner. They all were in Sonata Car of 'Karan'. From Jasdan at about 12.30 (midnight) they started for Ahmedabad where they stayed at the place of a friend of 'Karan'. From there they started early in the morning to go to Mumbai. The present petitioner was in Sonata Car of Karan at that time also.

It was on the Ahmedabad Express Highway that the accused, 'Kandhal Sarman Jadeja', 'Jayesh' Alias 'Jayu Deva Gadhvi', 'Raja Jabra', 'Karan Sarman Jadeja' and 'Umedpur Nathupuri' (present petitioner-accused) were intercepted and were arrested. At the time of arrest a mobile telephone of Siemens Company along with 10 live cartridges of 0.38 bore were found from the present petitioner.

4. Learned senior counsel vehemently submitted that even if the case of the prosecution is taken at its face value, there is no material much less an evidence legally admissible against the petitioner and therefore, this was a fit case wherein the learned Judge ought to have considered his application for discharge. He submitted that to summarise what is found against the petitioner is, 'a statement of a co-accused', and '10 live cartridges of 0.38 bore, in his possession'. He submitted that it is a co-incident that as per the case of the prosecution it is 0.38 bore cartridges which are used in the main offence. He submitted that only because it was 0.38 cartridges were used in the main offence

and live cartridges of 0.38 bore are recovered from the petitioner, he cannot be implicated in the offence. The learned senior counsel further submitted that, 'for possessing 0.38 live cartridges' a separate offence is registered. In that the petitioner is already granted bail. Therefore, his implication in the present offence is totally unwarranted and not in accordance with law. The learned senior counsel relied upon a decision of the Hon'ble the Apex Court in the matter of **Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja and others**, reported in in A.I.R. 1990 SC 1962. He relied upon the observations made by the Hon'ble the Apex Court in paras 6 and 7 of the judgement which are reproduced hereunder for ready perusal :

> “6. The next question is what is the scope and ambit of the 'consideration' by the trial Court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there

exists sufficient grounds for framing the charge, his inquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh, (1978) 1 SCR 257 : (AIR 1977 SC 2018) this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt, of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal, (1979) 2 SCR 229: (AIR

1979 SC 366) this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the Court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under:

> "(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
> (3) The test to determine a prima facie

> case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused he will be fully within his right to discharge the accused.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

7. Again in Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, (1979) 4 SCC 274: (AIR 1980 SC 52) this Court observed in paragraph 18 of the judgment as under:

> "The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage

> of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence."

From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

The learned senior counsel submitted that the Hon'ble the Apex Court has observed that,

> ".. .. no sufficient ground for proceeding against the accused clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his

judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. .. ..” (emphasis supplied)

5. Learned Additional Public Prosecutor Mr.Jani invited attention of the Court to the relevant para of the order under challenge. The learned APP submitted that the learned Judge has not committed any error in rejecting the application for discharge filed by the petitioner. He submitted that the learned Judge has rightly relied upon a decision of this Court in the matter of **Abbasbaig Habibbaig Mirza Vs. State of Gujarat**, reported in 2005 (2) G.L.H. 351. The learned APP submitted that under section 227 of the Code of Criminal Procedure the learned Judge is required to consider an application for discharge. He submitted that it is only in the case where the learned Judge upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, comes to the conclusion that, 'there is no sufficient ground for proceeding against the accused, he is under an obligation to discharge the accused, recording

reasons therefor'. (emphasis supplied)

The learned APP submitted that it is a trite law that, 'at the stage of framing of charge' the learned Judge is not supposed to appreciate the whole evidence and consider the case of the accused or his defence. The learned APP submitted that, 'framing of charge', as provided under section 228 of the Code of Criminal Procedure,' if the learned Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the learned Judge is duty bound to frame charge.

The learned APP submitted that the learned Judge has rightly taken into consideration the law laid down by the Hon'ble the Apex Court by various decisions which are referred to in the order and therefore, no interference is required at the hands of this Court in the order passed by the learned Judge. The learned APP submitted that even at the cost of repetition he be permitted to reiterate that, 'at the time of framing of charge, i.e passing an order in terms of section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is sufficient ground for

proceeding against the accused'. He submitted that the learned Judge is not expected to consider the case of the accused advanced by him in his defence.

6. In view of the aforesaid discussion the Court finds no substance in the present Criminal Revision Application and the same is dismissed.

(RAVI R. TRIPATHI, J.)

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